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AMENDED IN SENATE AUGUST 18, 2010

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AMENDED IN ASSEMBLY MAY 18, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2060

Introduced by Assembly Member Charles Calderon

February 18, 2010

An act to add Section 7111 to the Public Contract Code, ~~relating to public contracts~~ *and to amend Sections 7261 and 7262 of the Revenue and Taxation Code, relating to fixed price contracts.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2060, as amended, Charles Calderon. Public contracts: fixed price contracts: sales and use taxes ~~rate changes~~. *changes: transactions and use taxes.*

Existing law imposes requirements on public entities with respect to the terms of public contracts. Existing law imposes a state sales and use tax on retailers and on the storage, use, or other consumption of tangible personal property in this state at the combined rate of 7 ¼% of the gross receipts from the retail sale of tangible personal property in this state and of the sales price of tangible personal property purchased from any retailer for storage, use, or other consumption in this state that is stored, used, or otherwise consumed in this state.

This bill would require a fixed price contract, as specified, between a government entity, as defined, and a contractor to authorize payment for a change in the contract price that is attributable to an increase or

decrease in the state sales and use tax rate, with the increase or decrease paid in accordance with the contract terms or as agreed to by the parties, as prescribed. By placing new duties on local officials with respect to their contract practices, the bill would impose a state-mandated local program.

The Transactions and Use Tax Law authorizes districts, as specified, to impose transactions and use taxes in accordance with the Sales and Use Tax Law. That law requires the transactions tax portion and transactions use portion of any transactions and use taxes ordinance adopted under that law to include specified provisions, including provisions that exempt from tax the sale, or the storage, use, or other consumption of, tangible personal property obligated to be furnished or purchased for a fixed price pursuant to a contract entered into prior to the operative date of the ordinance, and provisions that exempt from tax a lease of, or possession of, or the exercise of any right or power over, tangible personal property during the period of time for which there is an obligation to lease the property for an amount fixed by the lease prior to the operative date of the ordinance. That law provides that property is not deemed obligated pursuant to a contract or lease if any party has an unconditional right to terminate the contract or lease.

This bill would instead provide that the property is not deemed obligated to a contract or lease if the tax payer has an unconditional right to terminate the contract or lease.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse cities and counties for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse cities and counties for sales and use tax revenues lost by them pursuant to this bill.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 7111 is added to the Public Contract Code, to read:

7111. (a) A fixed price contract between a government entity and a contractor shall authorize payment for a change in the contract price that is attributable to an increase or decrease in taxes imposed by Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code. This increase or decrease shall be paid in accordance with the provisions of the contract governing payment for changes in the work or, if no provisions are set forth, payment shall be as agreed to by the parties.

(b) This section shall apply only to an increase or decrease in the sales and use tax rate imposed with respect to the following:

(1) (A) The gross receipts from the sale of, and the storage, use, or other consumption in this state of, tangible personal property obligated pursuant to a contract entered into for a fixed price prior to the operative date of the increase or decrease in the sales and use tax rate.

(B) This paragraph shall apply only to a contract in which a government entity is a party to the contract.

(C) For purposes of this paragraph, tangible personal property shall not be deemed obligated pursuant to a contract for any period of time for which ~~any party to the contract~~ *the contractor* has the right to terminate the contract upon notice, whether or not the right is exercised.

(2) (A) The gross receipts from the sale of, and the storage, use, or other consumption in this state of, materials and fixtures obligated pursuant to a construction contract entered into for a fixed price prior to the operative date of the increase or decrease in the sales and use tax rate.

(B) This paragraph shall apply only to a construction contract in which a government entity is a party to the construction contract.

(C) For purposes of this paragraph, materials and fixtures shall not be deemed obligated pursuant to a construction contract for any period of time for which ~~any party to the contract~~ *the contractor* has the right to terminate the contract upon notice, whether or not the right is exercised.

(3) (A) A lease of tangible personal property that is a continuing sale of the property for any period of time for which the lessor is

1 obligated to lease the property for an amount fixed by the lease
2 prior to the operative date of the increase or decrease in the sales
3 and use tax rate.

4 (B) This paragraph shall apply only to a lease of tangible
5 personal property to a government entity.

6 (C) For purposes of this paragraph, the sale or lease of tangible
7 personal property shall be deemed not to be obligated pursuant to
8 a contract or lease for any period of time for which ~~any party to~~
9 ~~the contract or lease~~ *the contractor or lessor* has the unconditional
10 right to terminate the contract or lease upon notice, whether or not
11 that right is exercised.

12 (4) (A) The possession of, or the exercise of any right or power
13 over, tangible personal property pursuant to a lease that is a
14 continuing purchase of the property for any period of time for
15 which the lessee is obligated to lease the property for an amount
16 fixed by a lease entered into prior to the operative date of the
17 increase in the sales and use tax rate.

18 (B) This paragraph shall apply only to a lease of tangible
19 personal property to a government entity.

20 (C) For purposes of this paragraph, the storage, use, or other
21 consumption of, or possession of, or exercise of any right or power
22 over, tangible personal property shall be deemed not to be obligated
23 pursuant to a contract or lease for any period of time for which
24 ~~any party to the contract or lease~~ *the contractor or lessee* has the
25 unconditional right to terminate the contract or lease upon notice,
26 whether or not the right is exercised.

27 (c) For purposes of this section, the following terms apply:

28 (1) “Fixed price” means either of the following:

29 (A) The price or prices specified in the contract or lease, and
30 the contract or lease does not authorize an increase or decrease in
31 price due to an increase or decrease in the sales and use tax rate.

32 (B) The prices or price specified in the construction contract is
33 a lump sum price or a stated unit price or a guaranteed maximum
34 price, and the construction contract does not authorize an increase
35 or decrease in price due to an increase or decrease in the sales and
36 use tax rate.

37 (2) “Government entity” means the State of California, or any
38 city, county, or city and county, community college district, school
39 district, county superintendent of schools, or special district in this
40 state.

1 (d) (1) This section shall apply only to an increase or decrease
2 in the sales and use tax rate that occurs on or after the effective
3 date of the act adding this section.

4 (2) If the sales and use tax rate imposed pursuant to Sections
5 6051.7 and 6201.7 of the Revenue and Taxation Code, or any
6 portion thereof, is extended for a period or periods on and after
7 July 1, 2011, the sales and use tax rate extension shall be regarded
8 as an increase in the sales and use tax rate for purposes of this
9 section.

10 *SEC. 2. Section 7261 of the Revenue and Taxation Code is*
11 *amended to read:*

12 7261. The transactions tax portion of any transactions and use
13 taxes ordinance adopted under this part shall be imposed for the
14 privilege of selling tangible personal property at retail, and shall
15 include provisions in substance as follows:

16 (a) A provision imposing a tax for the privilege of selling
17 tangible personal property at retail upon every retailer in the district
18 at a rate of one-quarter of 1 percent, or a multiple thereof, of the
19 gross receipts of the retailer from the sale of all tangible personal
20 property sold by that person at retail in the district.

21 (b) Provisions identical to those contained in Part 1
22 (commencing with Section 6001), insofar as they relate to sales
23 taxes and are not inconsistent with this part, except that the name
24 of the district as the taxing agency shall be substituted for that of
25 the state and that an additional transactor's permit shall not be
26 required if a seller's permit has been or is issued to the transactor
27 under Section 6067.

28 (c) A provision that all amendments subsequent to the effective
29 date of this part to Part 1 (commencing with Section 6001) relating
30 to sales tax and not inconsistent with this part shall automatically
31 become a part of the transactions and use taxes ordinance.
32 However, no amendment shall operate so as to affect the rate of
33 tax imposed by the district's board.

34 (d) A provision that the amount subject to tax shall not include
35 the amount of sales tax or use tax imposed by the State of
36 California or by any city, city and county, or county pursuant to
37 the Bradley-Burns Uniform Local Sales and Use Tax Law, or the
38 amount of any state-administered transactions or use tax.

39 (e) A provision that there are exempted from the tax the gross
40 receipts from the sale of tangible personal property, other than fuel

1 or petroleum products, to operators of aircraft to be used or
2 consumed principally outside the county in which the sale is made
3 and directly and exclusively in the use of the aircraft as common
4 carriers of persons or property under the authority of the laws of
5 this state, the United States, or any foreign government.

6 (f) A provision that sales of property to be used outside the
7 district which are shipped to a point outside the district, pursuant
8 to the contract of sale, by delivery to that point by the retailer or
9 his or her agent, or by delivery by the retailer to a carrier for
10 shipment to a consignee at such point, are exempt from the tax.

11 For purposes of this section, “delivery” of vehicles subject to
12 registration pursuant to Chapter 1 (commencing with Section 4000)
13 of Division 3 of the Vehicle Code, aircraft licensed in compliance
14 with Section 21411 of the Public Utilities Code, and undocumented
15 vessels registered under Division 3.5 (commencing with Section
16 9840) of the Vehicle Code shall be satisfied by registration to an
17 out-of-district address and by a declaration under penalty of
18 perjury, signed by the buyer, stating that the address is, in fact, his
19 or her principal place of residence.

20 “Delivery” of commercial vehicles shall be satisfied by
21 registration to a place of business out of district and a declaration
22 under penalty of perjury, signed by the buyer, that the vehicle will
23 be operated from that address.

24 (g) A provision that the sale of tangible personal property is
25 exempt from tax if the seller is obligated to furnish the property
26 for a fixed price pursuant to a contract entered into prior to the
27 operative date of the ordinance. A lease of tangible personal
28 property which is a continuing sale of that property is exempt from
29 tax for any period of time for which the lessor is obligated to lease
30 the property for an amount fixed by the lease prior to the operative
31 date of the ordinance. For the purposes of this subdivision, the sale
32 or lease of tangible personal property shall be deemed not to be
33 obligated pursuant to a contract or lease for any period of time for
34 which ~~any party to the contract or lease~~ *the seller or lessor* has the
35 unconditional right to terminate the contract or lease upon notice,
36 whether or not that right is exercised.

37 *SEC. 3. Section 7262 of the Revenue and Taxation Code is*
38 *amended to read:*

39 7262. The use tax portion of any transactions and use tax
40 ordinance adopted under this part shall impose a complementary

1 tax upon the storage, use, or other consumption in the district of
2 tangible personal property purchased from any retailer for storage,
3 use, or other consumption in the district. The tax shall be at a rate
4 of one-quarter of 1 percent, or a multiple thereof, of the sales price
5 of the property whose storage, use, or other consumption is subject
6 to the tax, and the ordinance shall include provisions in substance
7 as follows:

8 (a) Provisions identical to those contained in Part 1
9 (commencing with Section 6001), insofar as they relate to use
10 taxes and are not inconsistent with this part, except that the name
11 of the district as the taxing agency shall be substituted for that of
12 the state. The name of the district shall be substituted for the word
13 “state” in the phrase “retailer engaged in business in this state” in
14 Section 6203 and in the definition of that phrase.

15 The following additional provisions shall be included:

16 (1) Except as provided in paragraph (2), a retailer engaged in
17 business in the district shall not be required to collect use tax from
18 the purchaser of tangible personal property, unless the retailer
19 ships or delivers the property into the district or participates within
20 the district in making the sale of the property, including, but not
21 limited to, soliciting or receiving the order, either directly or
22 indirectly, at a place of business of the retailer in the district or
23 through any representative, agent, canvasser, solicitor, subsidiary,
24 or person in the district under the authority of the retailer.

25 (2) “A retailer engaged in business in the district” shall also
26 include any retailer of any of the following: vehicles subject to
27 registration pursuant to Chapter 1 (commencing with Section 4000)
28 of Division 3 of the Vehicle Code, aircraft licensed in compliance
29 with Section 21411 of the Public Utilities Code, or undocumented
30 vessels registered under Division 3.5 (commencing with Section
31 9840) of the Vehicle Code. That retailer shall be required to collect
32 use tax from any purchaser who registers or licenses the vehicle,
33 vessel, or aircraft at an address in the district.

34 (b) A provision that all amendments to the provisions of Part 1
35 (commencing with Section 6001) relating to the use tax and not
36 inconsistent with this part shall automatically become a part of the
37 ordinance. However, no amendment shall operate so as to affect
38 the rate of tax imposed by the district’s board.

39 (c) A provision that the amount subject to tax shall not include
40 the amount of any sales tax or use tax imposed by the State of

1 California or by any city, city and county, or county pursuant to
2 the Bradley-Burns Uniform Local Sales and Use Tax Law (Part
3 1.5 (commencing with Section 7200)) or the amount of any
4 state-administered transactions or use tax.

5 (d) A provision that any person subject to a use tax under an
6 ordinance adopted pursuant to this part shall be entitled to credit
7 against that tax or any transactions tax, or to reimbursement for a
8 transactions tax, paid to a district or retailer in a district imposing
9 a transactions and use tax pursuant to this part.

10 (e) A provision that, in addition to the exemptions provided in
11 Sections 6366 and 6366.1, the storage, use, or other consumption
12 of tangible personal property, other than fuel or petroleum products,
13 purchased by operators of aircraft, and used or consumed by the
14 operators directly and exclusively in the use of the aircraft as
15 common carriers of persons or property for hire or compensation
16 under a certificate of public convenience and necessity issued
17 pursuant to the laws of this state, the United States, or any foreign
18 government, is exempt from the use tax.

19 (f) A provision that the storage, use, or other consumption in
20 the district of tangible personal property is exempt from the tax if
21 the purchaser is obligated to purchase the property for a fixed price
22 pursuant to a contract entered into prior to the operative date of
23 the ordinance. The possession of, or the exercise of any right or
24 power over, tangible personal property under a lease which is a
25 continuing purchase of the property is exempt from tax for any
26 period of time for which the lessee is obligated to lease the property
27 for an amount fixed by a lease entered into prior to the operative
28 date of the ordinance. For purposes of this subdivision, the storage,
29 use, or other consumption of, or possession of, or exercise of any
30 right or power over, tangible personal property shall be deemed
31 not to be obligated pursuant to a contract or lease for any period
32 of time for which ~~any party to the contract or lease~~ *the purchaser*
33 *or lessee* has the unconditional right to terminate the contract or
34 lease upon notice, whether or not the right is exercised.

35 *SEC. 4. Notwithstanding Section 2230 of the Revenue and*
36 *Taxation Code, no appropriation is made by this act and the state*
37 *shall not reimburse any local agency for any sales and use tax*
38 *revenues lost by it under this act.*

1 ~~SEC. 2.~~

2 *SEC. 5.* If the Commission on State Mandates determines that
3 this act contains costs mandated by the state, reimbursement to
4 local agencies and school districts for those costs shall be made
5 pursuant to Part 7 (commencing with Section 17500) of Division
6 4 of Title 2 of the Government Code.

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